



MEETING DATE: 03/05/07

ITEM NO.

9

## COUNCIL AGENDA REPORT

DATE: February 27, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION DENYING A REQUEST FOR A TWO LOT SUBDIVISION ON PROPERTY ZONED HR-2 1/2. NO SIGNIFICANT ENVIRONMENTAL IMPACTS HAVE BEEN IDENTIFIED AS A RESULT OF THIS PROJECT AND A MITIGATED NEGATIVE DECLARATION IS RECOMMENDED. APN 527-11-005. SUBDIVISION APPLICATION M-06-4 NEGATIVE DECLARATION ND-06-4 PROPERTY LOCATION: **15500 FRANCIS OAKS WAY** PROPERTY OWNER/APPLICANT/APPELLANT: MIKE AND ANN MOFFAT

### RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Uphold the Planning Commission's decision to deny Subdivision application M-06-04 **(motion required)**.
4. Refer to the Town Attorney for the preparation of the appropriate resolution **(no motion required)**.

If the Town Council determines that the Planning Commission's decision should be reversed or modified relative to either or both appeals:

1. The Council needs to find one or more of the following:
  - (1) Where there was error or abuse of discretion on the part of the Planning Commission; or
  - (2) The new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or

PREPARED BY: Bud N. Lortz, Director of Community Development

Reviewed by: PS Assistant Town Manager de Town Attorney \_\_\_\_\_ Clerk \_\_\_\_\_ Finance  
✓ Community Development

Revised: 2/27/07 10:38 AM

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- (3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.
2. If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in Subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.
3. If the appeal is approved, use the findings and consideration of the Architecture and Site applications (Attachment 2), and modify the conditions in Attachment 3 as appropriate.
4. Refer to the Town Attorney for preparation of the appropriate resolution(s).

#### BACKGROUND:

The subject 8.1 acre property is located on the south side of Francis Oaks Way at the westerly terminus of the road. Francis Oaks Way is a private road and is not maintained by the Town. There is an existing residence on the site that was approved by the Town Council in 2000.

On December 13, 2006 the Planning Commission considered the subdivision application and voted unanimously to deny the request based on lack of compliance with zoning requirements and a finding that the proposed development was not appropriate for the property. The applicant appealed the Commission's decision on December 22, 2006 (see Attachment 4).

#### PROJECT SUMMARY:

The applicant is proposing to subdivide a 8.1 acre property into two lots. The existing residence would remain on the larger parcel and a new residence would be constructed on the smaller parcel. The originally proposed lot sizes are 6.9 and 1.2 acres as shown on the tentative map (see Attachment 9). Given the Planning Commission's concern about the relatively small size of the second parcel, the applicant has indicated a willingness to make the parcel larger. Conceptual development plans were provided to demonstrate that a house can be constructed on the vacant parcel that would be created should the subdivision be approved (see Attachment 8).

#### DISCUSSION:

##### Slope Density

The HR-2½ slope density formula was applied to the property and resulted in 2.08 parcels. While the HR-2½ zoning implies a lot size of 2½ to 10 acres, Section 29.40.260 of the Zoning Ordinance allows a minimum lot size of 40,000 square feet. A lot of 40,000 square feet or greater complies with the Code provided the total number of allowable lots (gross lot area less public right of way divided by the minimum land area) is not exceeded. The proposed subdivision does not exceed the

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allowable density for the property. The smaller lot could be increased in size so that there is less disparity between the lots sizes, however this would not change the size or location of the proposed building site.

#### Exclusion of Right-of-Way

A portion of Francis Oaks Way crosses the project site. Neighbors questioned whether the road area should be included with the land area for purposes of calculating the slope density. The Zoning Ordinance states that the gross acreage of the parcel does not include existing public right-of-way. Francis Oaks Way is a private road that is within an ingress-egress easement over the property. The road easement is not excluded from the gross land area because it is not public right-of-way.

#### Francis Oaks Way

Francis Oaks Way is a narrow, winding roadway that does not meet Town public street standards. Topographic constraints preclude the road from being widened for much of its length. Pull-outs were installed as part of a previous project to help facilitate vehicles passing on narrow stretches of the road. Neighbors have asked whether further improvements to Francis Oaks Way can be required as a condition of subdivision approval. Road widening can only be required if there is adequate justification. Consequently, the Town would need to show that the existing road is a threat to public safety or the Santa Clara County Fire Department would need to show that adequate access cannot be provided after the project. The Fire Department did not request road widening when reviewing the project. Engineering staff determined that while the road does not conform to current development standards, it has the capacity to accommodate the proposed traffic. The Town Traffic Engineer did not find any justification for widening the road.

#### Least Restrictive Development Area

As required by the Town's Hillside Development Standards & Guidelines (HDS&G), a plan showing the Least Restrictive Development Area (LRDA) has been prepared (see sheet 2 of Exhibit H). The proposed building site is within the LRDA and will be contained within an area with slopes not exceeding 30%. The home site would not be on a significant ridge line or within a riparian corridor. In addition, impacts to vegetation and wildlife can be minimized and a new house can be constructed within the grading criteria specified in the HDS&G. The most appropriate location for a building site is relatively close to Francis Oaks Way. The building site could be increased minimally by shifting the westerly property line over 20 feet. Beyond that, the slopes exceed 30% and would be outside the LRDA.

#### Building Site

The proposed building site will be accessed from Francis Oaks Way. The applicant submitted conceptual development plans for a new residence of approximately 5,700 square feet (see Attachment 7). The plans were provided to demonstrate that the proposed second lot has a feasible

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building site with a conforming driveway and can support a relatively large home that complies with the HDS&G. There is a specimen oak tree within the proposed building site that will need to be removed with this particular development plan.

The conceptual design presents a relatively bulky and massive rear elevation with a high stem wall. The lower level deck is six to seven feet above the grade and could be interpreted as a three story appearance. In addition, the size of the building site is limited and does not allow for any usable outdoor space other than decks or balconies. Because the front setback is measured from property line and not the edge of the road, the house is closer than 30 feet to the edge of pavement. This also occurs with the home at 15491 Francis Oaks, directly across the road. However, other homes in the area have greater setbacks from the road, including the existing home on the project site. An Architecture & Site application would be required for the new residence and it could be of a different design and footprint than shown on the conceptual plans.

#### Lot Configuration

The proposed lot lines are very unusual in that the two parcels would not be of similar size. The smaller parcel is a rectangular shape that does not flow with the current property configuration and would be surrounded on three sides by the larger parcel. The Council could require the lot configuration to be modified and/or the size of the smaller parcel to be increased.

#### General Plan Compliance

Removal of the oak tree that is within the building site conflicts with General Plan Policy L.P.8.8 which states that existing specimen trees shall be preserved and protected as part of any development proposal. The applicant is proposing to plant replacement trees as mitigation for the loss of the oak. Mitigation for this tree would be six 24-inch box trees or two 36-inch and two 48-inch box trees pursuant to the canopy replacement criteria in the Tree Protection Ordinance. There is adequate space on the property to plant replacement trees.

The proposed density is within the range allowed for under the General Plan land use designation of 0-1 units per acre.

#### Hillside Development Standards & Guidelines

The sixth bullet under the foreward to the HDS&G (page 5) states that not every site can be developed at the maximum density or intensity allowed by the Zoning Ordinance. Chapter VIII, section A., relative to subdivisions, reiterates that site constraints and the implementation of the HDS&G may not allow a specific site to be developed to the maximum density allowed by the Zoning Ordinance.

The HDS&G strongly discourages development on slopes greater than 30%. The average slope of the proposed building site, depending on where it is measured, is between 28 and 30%, so while it

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technically meets the requirement for new development, it is just under the threshold where location of a new home would not be supported. If the lot were existing, the applicant would be allowed to develop it. However, when determining whether to allow a new lot to be created, it is important to determine that the proposed building site is viable and that it can be developed within the parameters of the HDS&G.

PLANNING COMMISSION ACTION:

The Planning Commission considered the subdivision application on December 13, 2006. The Commission voted unanimously to deny the application. As provided for in Section 66474 of the State Subdivision Map Act, if any of the seven findings can be made, it is grounds for denial (see Attachment 1). In denying the subdivision application the Commission determined that the project was not compliant with zoning requirements and that the proposed development was not appropriate for the site, which is inconsistent with findings c and d.

APPEAL:

The applicant appealed the Planning Commission's decision based on his belief that the Planning Commission erred or abused its discretion in finding that the subdivision application is not consistent with the Zoning Code, and in finding that the site is not physically suitable for the proposed density and/or type of development. In addition, the applicant believes that the Commission did not apply the Zoning Code, but instead relied on the HDS&G as the basis for denial.

In considering a subdivision in the hillside, the Zoning Ordinance, General Plan, Hillside Specific Plan and the HDS&G are all applicable documents. While the zoning requirements, including minimum lot size, setbacks and height, can be complied with, the Commission was concerned that by approving a new building site with limited development potential, it would not be consistent with the intent of the Hillside Specific Plan and the HDS&G. In addition, there was significant neighborhood objection to the proposed application (see Exhibits G and I to Attachment 7). The staff log notes for the December 13, 2006 public hearing documents public testimony from neighbors (see Attachment 6), most of whom did not support the subdivision. Verbatim minutes are not available for this meeting.

ENVIRONMENTAL REVIEW:

As required by the California Environmental Quality Act (CEQA), an Initial Study and Mitigated Negative Declaration have been prepared for the project. These documents were previously forwarded to the Council under separate cover. The environmental review was completed by the Town's Environmental Consultant, Geier & Geier. Three potentially significant impacts resulted in the inclusion of mitigation measures. These include required implementation of geotechnical recommendations, further evaluation of tree impacts, and development of a traffic control plan for construction purposes. These mitigation measures have been included as conditions of approval

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(Attachment 3). In addition, a Mitigation Monitoring Program has been prepared (Attachment 2) to designate the responsible department and timing of each mitigation measure.

CONCLUSION:

As stated in the Hillside Specific Plan, there are a number of physical factors that affect the intensity and type of development for the hillside area including topographic constraints. Solutions to development problems are fundamental to the approval of a particular project. When the Moffat home was approved in 2000, there was discussion at both the Planning Commission and Town Council levels about whether the property could be subdivided further. At that time the Council did not prohibit further subdivision because a complete analysis had not been done. The owners were aware at the time the application was filed that there was no guarantee a subdivision would be successful. Now that it has been thoroughly evaluated, staff finds that development of the proposed building site is problematic. While it appears that the building site technically meets the requirement for new development, it is just under the thresholds that would not allow a second lot.

Staff believes that the ultimate development of the property will be difficult and will push the requirements of the HDS&G. After deliberation, the Planning Commission concluded that the proposal does not meet the requirements of the Subdivision Map Act relative to the suitability of the site for the type and density of development.

FISCAL IMPACT: None

Attachments:

1. Required Findings & Considerations (four pages)
2. Mitigation Monitoring Program (two pages)
3. Recommended Conditions of Approval (four pages)
4. Initial Study & Mitigated Negative Declaration (*previously received under separate cover*)
5. Applicant's Appeal Statement (one page)
6. Staff log notes for December 13, 2006 Planning Commission hearing (three pages)
7. December 13, 2006 Planning Commission report with Exhibits A-J (*previously received under separate cover*)
8. Conceptual house plans (eight pages), received July 28, 2006
9. Subdivision plans (two pages), received July 28, 2006

Distribution:

Mike & Ann Moffat, 15500 Francis Oaks Way, Los Gatos, CA 95032

BNL:SD

**TOWN COUNCIL – MARCH 5, 2007**  
**REQUIRED FINDINGS FOR:**

15500 Francis Oaks Way  
Subdivision Application M-06-4  
Negative Declaration ND-06-4

Requesting approval of a two lot subdivision on property zoned HR-2½. No significant environmental impacts have been identified as a result of this project and a Mitigated Negative Declaration is recommended. APN 527-11-005.

PROPERTY OWNER/APPLICANT: Mike and Ann Moffat

**FINDINGS:**

***State Subdivision Map Act:***

In order to deny the application, the Planning Commission must make one of the following findings, as required by Section 66474 of the State Subdivision Map Act:

- a. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- b. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- c. That the site is not physically suitable for the type of development.
- d. That the site is not physically suitable for the proposed density of development.
- e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

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MITIGATION MONITORING PLAN  
 DATE: December 13, 2006  
 PROJECT: 15500 Francis Oaks Way/M-06-04, ND-06-04

<u>Mitigation</u>	<u>Monitoring Action</u>	<u>Responsibility</u>	<u>Timing</u>
<i>BIOLOGICAL RESOURCES</i>			
A certified arborist shall evaluate the proposed home design for direct and indirect effects of proposed foundation and home construction as well as potential changes in drainage. The design of the foundation and drainage facilities shall be modified as necessary in accordance with the arborist's recommendations. In addition, the arborist shall provide detailed measures to protect trees during construction of the proposed home and associated facilities. The arborist shall specifically address drainage from the roof, which could change drainage conditions at oak root zones located immediately adjacent to the home.	Required as a condition of approval.	Directors of Parks & Public Works & Community Development	A&S review, Building plan check & during construction
<i>GEOLOGIC HAZARDS</i>			
Trenching for proposed water and sewer lines on proposed Lots 1 and 2 shall be prohibited. These lines shall be constructed using a method that does not disturb the ground surface (e.g., bore and jack on slopes greater than 30 percent).	Required as a condition of approval.	Director of Parks & Public Works	Prior to and during construction
Prior to issuance of a building permit, a screening-level slope stability analysis of proposed Lot 1 shall be completed as required by the 2002 Seismic Hazards Mapping Act.	Required as a condition of approval.	Director of Parks & Public Works	Prior to and during construction



MITIGATION MONITORING PLAN

DATE: December 13, 2006

PROJECT: 15500 Francis Oaks Way, M-06-04, ND-06-04

<u>Mitigation</u>	<u>Monitoring Action</u>	<u>Responsibility</u>	<u>Timing</u>
<i>TRANSPORTATION &amp; TRAFFIC</i>			
Prior to issuance of any permit, the applicant shall complete a pre-construction pavement condition survey of Francis Oaks Way to document road conditions. Prior to issuance of any certificate of occupancy, the applicant shall conduct a post-construction survey to determine whether any road damage occurred as a result of project construction. The project applicant shall be responsible for completing any required road repairs prior to issuance of a certificate of occupancy.	Required as a condition of approval	Director of Parks & Public Works	Prior to issuance of permit and final inspection
The project sponsor shall work with the Engineering Division of the Parks and Public Works Department to develop a traffic control plan (e.g., requiring flag persons along one-lane sections of Francis Oaks Way for equipment/material deliveries, specifying delivery hours, and notifying neighbors in advance) to minimize the potential for traffic safety problems and delays to local residents.	Required as a condition of approval	Director of Parks & Public Works	Prior to issuance of permit and during construction

**TOWN COUNCIL - MARCH 5, 2007**  
**CONDITIONS OF APPROVAL**

15500 Francis Oaks Way  
Subdivision Application M-06-4  
Negative Declaration ND-06-4

Requesting approval of a two lot subdivision on property zoned HR-2½. No significant environmental impacts have been identified as a result of this project and a Mitigated Negative Declaration is recommended. APN 527-11-005.

PROPERTY OWNER/APPLICANT: Mike and Ann Moffat

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved on December 13, 2006 and noted as received by the Town on July 28, 2006. Any changes or modifications to the approved plans shall be approved by the Community Development Director or the Planning Commission depending on the scope of the change(s).
2. EXPIRATION OF APPROVAL. The Tentative Map application shall expire two years from the date of approval if a Final Map has not been recorded, pursuant to Sections 24.20.070 and 24.70.035 of the Subdivision Ordinance.
3. COMPLIANCE MEMORANDUM. The applicant shall prepare and submit a memorandum with the building permit, detailing how each of these Conditions of Approval have or will be addressed.
4. \*\*BIOLOGICAL RESOURCES MITIGATION MEASURE. A certified arborist shall evaluate the proposed home design for direct and indirect effects of proposed foundation and home construction, and potential changes in drainage. The design of the foundation and drainage facilities shall be modified as necessary in accordance with the arborist's recommendations. The arborist shall provide detailed measures to protect trees during construction of the proposed home and associated facilities. The arborist shall specifically address drainage from the roof which could change drainage conditions at oak root zones located immediately adjacent to the home.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:

*Engineering Division*

5. \*\*GEOLOGY AND SOILS MITIGATION MEASURE-1. Trenching for proposed water and sewer lines shall be prohibited on both lots. These lines shall be constructed using a method that does not disturb the ground surface (e.g. bore and jack on slopes greater than 30%).
6. \*\*GEOLOGY AND SOILS MITIGATION MEASURE-2. A screening-level slope stability analysis of parcel A shall be completed as required by the 2002 Seismic Hazards Mapping Act, prior to issuance of a building permit.

7. SOILS REPORT. One copy of the soils report shall be submitted with the parcel map application. The soils report shall include specific criteria and standards governing site grading, drainage, pavement design, retaining wall design and erosion control. A screening level slope stability analysis shall be included. Recommendations for foundation design shall incorporate the results of the slope stability analysis. The reports shall be signed and "wet stamped" by the engineer or geologist, in conformance with Section 6735 of the California Business and Professions Code.
8. PARCEL MAP. A parcel map shall be recorded. Two copies of the parcel map shall be submitted to the Engineering Division of the Parks & Public Works Department for review and approval. Submittal shall include closure calculations, title reports and appropriate fee. The map shall be recorded before any permits are issued.
9. UTILITY COMPANY REVIEW. Letters from the water, sewer, electric, telephone, cable, and trash companies indicating that the proposed map and easements are acceptable shall be provided prior to recordation of the parcel map.
10. DEDICATIONS. The following shall be dedicated on the parcel map.
  - a. Parcel A. Private water and sewer easements shall be provided as required.
11. OFF-SITE EASEMENTS. Proof of offsite water and sanitary sewer easements to existing facilities on Shady Lane shall be provided prior to recordation of a parcel map.
12. OFF-SITE IMPROVEMENTS. All water, sewer, electric, telephone, and cable utility services shall be installed by the developer. Plans for those improvements shall be prepared by a California registered civil engineer, reviewed and approved by the Town, and guaranteed by contract, Faithful Performance Security and Labor & Materials Security before the recordation of a map. The improvements must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued.
13. WORK ON SLOPES. No grading or trenching shall be allowed on slopes steeper than 30-percent. Utilities may be constructed on such slopes through the use of trenchless technologies, however, no disturbance of slopes steeper than 30-percent shall be allowed.
14. DESIGN CHANGES. The Applicant's registered Engineer shall notify the Town Engineer, in writing, at least 72 hours in advance of all differences between the proposed work and the design indicated on the plans. Any proposed changes shall be subject to the approval of the Town before altered work is started. Any approved changes shall be incorporated into the final "as-built" drawings.
15. INSURANCE. One million dollars (\$1,000,000) of liability insurance holding the Town harmless shall be provided in a format acceptable to the Town Attorney before recordation of the map.
16. PLAN CHECK FEES. Plan check fees shall be deposited with the Town prior to submittal of plans to the Engineering Division of the Parks and Public Works Department.
17. INSPECTION FEES. Inspection fees shall be deposited with the Town prior to issuance of any Permit or recordation of the Final Map.
18. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge

shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.

19. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
20. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
21. PRECONSTRUCTION PAVEMENT SURVEY. Prior to issuance of any permit, the project Applicant shall complete a pavement condition survey documenting the extent of existing pavement defects using a 35-mm or digital video camera. The survey shall extend the full length of Francis Oaks Way between Blossom Hill Road and the project site. In addition, a pavement deflection analysis conforming to the same limits as the photographic survey shall be performed to determine pavement strength. The results shall be documented in a report and submitted to the Town for review. This condition may be waived if the applicant agrees that Francis Oaks Way will not be used for ingress and egress of contractor vehicles, or for delivery of equipment or materials.
22. POSTCONSTRUCTION PAVEMENT SURVEY. The project Applicant will complete a pavement condition survey and pavement deflection analysis to determine whether road damage occurred as a result of project construction and whether there were changes in pavement strength. Rehabilitation improvements required to restore the pavement to pre-construction condition and strength shall be determined using State of California procedures for deflection analysis. The results shall be documented in a report and submitted to the Town for review and approval. The Applicant shall be responsible for completing any required road repairs prior to release of the faithful performance bond. This condition may be waived if Francis Oaks Way was not used for ingress and egress of contractor vehicles, or for delivery of equipment or materials.
23. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Engineering Division of the Parks & Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the San Francisco Bay Regional Water Quality Control Board for projects disturbing more than one acre. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim erosion control method shall include, but are not limited to: silt fences, fiber rolls (with locations and details), erosion control blankets, Town standard seeding specification, filter berms, check dams, retention basins, etc. Provide erosion control measures as needed to protect downstream water quality during winter months. The grading, drainage, erosion control plans and SWPPP shall be in compliance with applicable measures contained in the amended provisions C.3 and C.14 of Order 01-024 of the amended Santa Clara County NPDES Permit.

24. **DUST CONTROL.** Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the Town, or a minimum of three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets will be cleaned by street sweepers or by hand as often as deemed necessary by the Town Engineer, or at least once a day. Watering associated with on-site construction activity shall take place between the hours of 8 a.m. and 5 p.m. and shall include at least one late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept on a daily basis during the workweek to the satisfaction of the Town. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed 25 MPH. All trucks hauling soil, sand, or other loose debris shall be covered.
25. **SILT AND MUD IN PUBLIC RIGHT-OF-WAY.** It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
26. **RESTORATION OF PUBLIC IMPROVEMENTS.** The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
27. **CONSTRUCTION NOISE.** Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.
28. **PRIVATE SEWAGE DISPOSAL SYSTEMS.** No private sewage disposal systems shall be allowed. Provisions for connection to West Valley Sanitation District facilities shall be provided.

RECEIVED

SEP 21 2006

INITIAL STUDY

TOWN OF LOS GATOS  
PLANNING DIVISION

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15500 FRANCIS OAKS WAY  
(ASSESSOR'S PARCEL NUMBER 527-11-005)  
LOS GATOS, CALIFORNIA

SUBDIVISION APPLICATION M-06-4  
NEGATIVE DECLARATION ND-06-4

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PREPARED FOR  
TOWN OF LOS GATOS  
COMMUNITY DEVELOPMENT DEPARTMENT  
110 E. MAIN STREET  
LOS GATOS, CA 95030

SEPTEMBER 2006

PREPARED BY  
GEIER & GEIER CONSULTING, INC.  
P.O. BOX 5054  
BERKELEY, CA 94705-5054  
510/644-2535

**TOWN OF LOS GATOS  
COMMUNITY DEVELOPMENT DEPARTMENT**

**ENVIRONMENTAL CHECKLIST FORM**

1. Project Title: 15500 Francis Oaks Way  
Subdivision Application M-06-4  
Negative Declaration ND-06-4
2. Lead Agency Name and Address: Town of Los Gatos  
Community Development Department  
110 East Main Street  
Los Gatos, CA 95031
3. Contact Person and Phone Number: Suzanne Davis, (408) 354-6875
4. Project Location: 15500 Francis Oaks Way  
Assessor's APN 527-11-005 (Figure 1)
5. Property Owner's  
and Project Applicant's  
Name and Address: Mike and Ann Moffat  
15500 Francis Oaks Way  
Los Gatos, CA 95032
6. General Plan Designation: Hillside Residential (0 to 1 dwelling unit per acre)
7. Zoning: HR-2½, Hillside Residential (2½ to 10 acres per dwelling unit)
8. Description of Project: The project applicants are requesting approval to allow the subdivision of a ±8.1-acre parcel into two lots. Lot 1 would be 1.2 acres and Lot 2 would be ±6.9 acres. The existing residence would be located on the 6.9-acre parcel, while the new residence would be constructed on the 1.2-acre parcel. Lot 1 would be a rectangular lot with the easement for Francis Oaks Way located extending along the northern lot boundary within this parcel. Lot 2 would consist of the remainder of the project site, surrounding Lot 1 on three sides, and also including the Francis Oaks Way easement within this parcel along its northern boundary.

In addition to development of a new home, the proposed application would include extension of water and sewer lines from the existing home on Lot 2 and proposed home on Lot 1 to water and sewer lines that are planned to be developed in Shady Lane Extension as part of the recently approved Highlands of Los Gatos project. Proposed plans indicate that the water and sewer lines would be extended south (downhill) from each home, across the drainage that traverses both properties, and then extend westward along an existing dirt road (located parallel to and south of the drainage), eventually connecting with planned water and sewer lines in Shady Lane Extension on the Highlands property to the west.

## INITIAL STUDY – 15500 FRANCIS OAKS WAY

9. Surrounding Land Uses and Setting: Francis Oaks Way currently provides access to approximately 18 existing homes. Upper Francis Oaks Way (the section above or south of 15410) currently provides access to six existing homes. The Town recently approved a planned development (Highlands of Los Gatos) and its boundary adjoins the project parcel's southern and western boundaries. The approved development will create 19 residential lots on the 66-acre development site. This development includes an option for an emergency access connection to Francis Oaks Way if a viable design can be identified; access to the Highlands project will be provided from Shady Lane, not Francis Oaks Way. As part of the Highlands development, the project sponsor proposed to make available to neighbors the option to connect to the project's public water and sewer systems.<sup>1</sup> As part of the Highlands development, a water main will be extended westward from the existing water tanks above Greenridge Terrace (located east of the site), continue westward along Francis Oaks Way (adjacent to the proposed Lot 2), and terminate at the existing water tanks on proposed Lot 1.

The ±8.1-acre project parcel is located on the south side of upper Francis Oaks Way. At present, there is one existing single-family residence on the existing project parcel (15500 Francis Oaks Way). Land uses adjoining the project parcel's northern boundary include two lots, both developed with single-family residences (the westerly home is currently under construction), across Francis Oaks Way. In addition, there is an existing residence and guest house on a parcel that adjoins the northwest corner of the project parcel (at the end of Francis Oaks Way). The parcel adjoining the proposed parcel's eastern boundary is developed with one residence, which is located on the north side of Francis Oaks Way.

10. Other agencies whose approval is required (e.g., permits, financing approval, or participation agreements): Santa Clara County Fire Department and San Jose Water Company.

### ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages:

	Aesthetics		Agriculture Resources		Air Quality
X	Biological Resources		Cultural Resources	X	Geology/Soils
	Hazards & Hazardous Materials		Hydrology/Water Quality		Land Use/Planning
	Mineral Resources		Noise		Population/Housing
	Public Services		Recreation	X	Transportation/Traffic
	Utilities/Service Systems		Mandatory Findings of Significance		



**EVALUATION OF ENVIRONMENTAL IMPACTS****ISSUES:**

Issues (and Supporting Information Sources)	Potentially Significant Impact	Potentially Significant Impact Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>I. Aesthetics - Would the project:</b>				
a) Have a substantial adverse effect on a scenic vista?			X	
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
c) Substantially degrade the existing visual character or quality of the site and its surroundings?			X	
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?			X	

The proposed subdivision and development of Lot 1 would be directly east of the existing residence on the project site. The new 1.2-acre lot would extend southward from the Francis Oaks Way right-of-way for approximately 440 feet, encompassing both south- and north-facing hillsides as well as a drainage channel crossing the middle of the new lot. The new home site proposed on Lot 1 would be situated on the upper, south-facing hillside adjoining Francis Oaks Way. Access to the proposed residence would be provided by a 30-foot long driveway that would extend from Francis Oaks Way.

Development of a home on proposed Lot 1 would not obstruct or adversely affect any available scenic vistas from adjacent properties. The future residence on proposed Lot 1 would be visible primarily from the existing residence on the site. Depending upon the proposed design, the future home could also be partly visible from two existing residences (15471 and 15431) located north and northeast of the project site, across Francis Oaks Way. Views from these residences would be substantially screened by native trees and landscaping on adjoining properties and along Francis Oaks Way. The project parcel has a total of 41 trees (12 on proposed Lot 1 and 29 on proposed Lot 2). Potential retention or relocation of 10 of the 12 existing trees on the site and all 29 trees on Lot 2 would help minimize changes in the surrounding area's visual character as viewed from the road. Potential retention of eight existing trees near Francis Oaks Way would help screen views of the future home on Lot 1 from the two existing residences to the north and northeast.

Views of the future home on proposed Lot 1 would be available from approved lots of the Highlands of Los Gatos project, which adjoins the project parcel's southern and western boundaries. Approved Lots 9, 10, 11, and 12 of the Highlands project would be closest to the project site and most directly affected. Project plans for the Highlands development indicate that the building sites for these four lots are set back from the common property line with the project site. Intervening mature oak trees on the Highlands lots and the project site could screen views of the future home on Lot 1 from these residential lots.

As part of the Architecture and Site Review process for any future development proposal on Lot 1, the Town will evaluate the visibility of the future home from adjacent residences. The Town will require story poles to be erected on the site to determine visibility of the future structure from adjacent areas. It should be noted that potential removal of a mature 26-inch oak tree, the second largest tree on the proposed parcel, would alter the visual character of the parcel, but the change in views would be limited

project with the CAP is determined by comparing the project's consistency with the Los Gatos General Plan. Since the CAP is based on the Town's General Plan land use designations and population projections of the Association of Bay Area Governments (ABAG) that were in effect at the time the CAP was approved, consistency with the General Plan would indicate consistency with the CAP. The project would be consistent with the use and density allowed on the project site by the Los Gatos General Plan, and therefore, the project would be consistent with the CAP.

The San Francisco Bay Area Air Basin is classified by the BAAQMD as non-attainment for ozone and inhalable particulates (PM<sub>10</sub>). According to the Town Planning Department, the proposed project would result in a net traffic increase of 10 daily trips, with 1 AM peak hour trip and 1 PM peak hour trip. Air emissions increases associated with the proposed project would not be considered significant since the size of the proposed project would not exceed the Bay Area Air Quality Management District's (BAAQMD) threshold levels for potential significance.<sup>2</sup> The BAAQMD threshold level for potential significance is 375 single-family units. At or above this size, traffic generated by the project would have the potential to generate significant local and regional air quality impacts, and an air quality impact assessment would need to be prepared and submitted to the BAAQMD for review.

Adjacent residential uses are considered to be sensitive receptors. Proposed grading activities would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions. The proposed Lot 1 would be 1.2 acres, but project construction would result in surface disturbance of less than one acre. The BAAQMD does not require quantification of construction emissions, but considers any project's construction-related impacts to be less than significant if required dust-control measures are implemented. The Town's standard dust control conditions require implementation of the BAAQMD's standard dust control measures (required on sites of three acres or less), which would mitigate the project's construction-related air quality impacts to a less-than-significant level.

Issues (and Supporting Information Sources)	Potentially Significant Impact	Potentially Significant Impact Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>IV. Biological Resources - Would the project:</b>				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?			X	
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community (i.e., aquatic and wetland habitat) identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X

## INITIAL STUDY – 15500 FRANCIS OAKS WAY

requirements range from two to six 24-inch box size trees or two 36-inch and/or 48-inch box size trees, depending on the canopy size of the tree to be removed.

To ensure long-term viability of oak trees located in proximity to the proposed homes and associated facilities, the following measure shall be required:

1. *A certified arborist shall evaluate the proposed home design for direct and indirect effects of proposed foundation and home construction as well as potential changes in drainage. The design of the foundation and drainage facilities shall be modified as necessary in accordance with the arborist's recommendations. In addition, the arborist shall provide detailed measures to protect trees during construction of the proposed home and associated facilities. The arborist shall specifically address drainage from the roof, which could change drainage conditions at oak root zones located immediately adjacent to the home.*

In addition to the potential effects on the project site's oaks, the proposed subdivision of the site entails the creation of Lot 1, which includes a segment of the seasonal drainage channel that crosses the site. The characteristics of this drainage channel were evaluated extensively as part of the EIR for the Highlands of Los Gatos project.<sup>1</sup> In brief, the EIR analysis indicates:

“For the most part, vegetation within the drainage channel was undifferentiated from the surrounding upland habitats of the site. The dominant plant species observed within the channel, along with their U.S. Fish and Wildlife Service (USFWS) wetland indicators, include Italian ryegrass (UPL), perennial ryegrass (*Lolium perenne*) (FAC), coyote brush (UPL), Italian thistle (UPL), soft chess (FACU), and poison oak (UPL).”

This description of seasonal drainage channel habitat would also apply to the segment of the drainage channel that traverses the project site, including the portion within the proposed Lot 1. As part of the public agency consultation process for the Highlands EIR, the U.S. Army Corps of Engineers (USACE) indicated that there are no jurisdictional waters of the United States on the Highlands site, including the seasonal drainage channel discussed above.<sup>3</sup> To the extent that the project site's seasonal drainage is a middle segment of the drainage channel referenced by the USACE, it could be inferred that the USACE would also have no jurisdiction over the drainage channel and associated habitat on the project site.

In order to determine the potential for USACE jurisdiction over the seasonal drainage swale on the project site, the project applicant retained H.T. Harvey & Associates to assess the drainage conditions and characteristics of the seasonal channel that crosses the project site. The consultant conducted a review of previous background studies and performed a field survey of the drainage swale to determine the potential for agency jurisdiction over the channel. Based on the review of background information and field inspection, the consultant concluded that:

“field characteristics used by the Corps or CDFG in establishing jurisdiction are entirely absent on site. Nowhere on the property was there a co-occurrence of the requisite three parameters (hydrophytic vegetation, hydric soils and wetland hydrology). The drainage swale is without an “ordinary flow” and there is a total absence of wetland or riparian vegetation along this reach of the swale.”

Consequently, no permits from the USACE or CDFG would be required for the proposed subdivision of the project site or for the future development of one single-family home on Lot 1.

A review of the Town's hazards maps<sup>5</sup> indicates that the project site has a high potential for fault rupture, moderate potential for slope stability hazard (moderate hazard adjacent to Shady Lane), moderate to low potential for seismic shaking, low shrink-swell potential, no potential for liquefaction, and very high erosion hazard. Debris flow hazards were identified over most of the project property, including all of proposed Lot 1. The Town's Fault Map identifies lineation indicative of faulting at the eastern boundary of the project property and proposed Lot 1.<sup>6</sup> Given the site's sloping topography, there would be a high potential for erosion hazards if soils are subject to concentrated runoff flows. Future development plans for proposed Lot 1 will be subject to Architecture and Site review, and at a minimum, standard Town conditions will include provision of a complete erosion control plan (including interim erosion control measures and drainage controls such as energy dissipators), and such requirements are expected to reduce potential erosion hazards to a less-than-significant level.

A detailed engineering geologic investigation was prepared by Steven F. Connelly, C.E.G. in March 2006<sup>7</sup> and a peer review of the Connelly report was completed for the Town by Geomatrix Consultants in May 2006.<sup>8</sup> Copies of these studies are on file at the Los Gatos Community Development Department. This study involved review of published maps and aerial photographs, excavation of three test pits, and a site reconnaissance. This investigation concluded that the proposed subdivision and construction of a new residence is feasible and the site appears to be geologically suitable for the proposed development provided it is constructed according to recommendations of the project geotechnical engineering firm, Redwood Geotechnical, Inc. In its peer review of this report, Geomatrix identified two concerns: (1) proposed construction of sewer and water lines on slopes greater than 30% and across the seasonal drainage; and (2) the potential for instability of the soils and need for a screening-level slope stability analysis. The following discussion is based on information presented by Connelly and Geomatrix.

The property is mapped as being underlain by a block of Monterey Shale mantled by colluvium between the potentially active Blossom Hill and Shannon faults. The site lies within the seismically active Bay Area, but is not within any of the "Earthquake Fault Zones" established by the Alquist-Priolo Earthquake Fault Zoning Act of 1972. No known active or potentially active faults traverse the project site. The Blossom Hill fault is located 300 feet northeast of the property and the Shannon fault is located between 4,400 and 600 feet north of the northern project boundary. Therefore, the potential for primary fault ground rupture is considered to be low. However, the property will be subjected to very strong to violent ground shaking during a future large earthquake on the nearby San Andreas fault zone, which is located approximately 5 miles southwest of the property or on one of the other major active fault zones in the region. It should be noted that most of the Bay Area as well as surrounding residences are subject to similar groundshaking hazards. The future home on Lot 1 will be required to meet seismic design parameters specified by Uniform Building Code (UBC) for site grading, drainage, pavement design, retaining wall design, erosion control, and foundation design. By implementing applicable UBC requirements and sound engineering practices, the Los Gatos General Plan EIR determined site development would be at no higher risk of potentially significant impacts due to seismically-induced ground failure from seismic shaking than any other similarly situated area.

No evidence of landsliding or faulting was observed by Connelly in the materials encountered in the test pits. Groundwater was not observed in the pits. Connelly concluded that the potential for deep-seated landsliding on the proposed home site is very low, the potential hazards from debris flow landsliding, ground subsidence, and lateral spreading are negligible, and the potential for liquefaction is low. In addition, Connelly found that the project site is located in an area free from the hazard of seiches and flooding caused by dam failure. Geomatrix indicates that the entire property, except along the drainage, is located within the Zone of Potential Earthquake Induced Landslides on the State of California Seismic Hazard Zones Map of the Los Gatos 7.5' Quadrangle. The Seismic Hazard Zones map designations are based, in part, on slope steepness (potential for landslides), and do not necessarily mean that landslides are, in fact, mapped on the property. The scale of the map is also not always appropriate for analysis of small sites. Because the Seismic Hazard Zones map designations may not be appropriate for making site-

The project site is not included on any Hazardous Wastes and Substances Sites List.<sup>9</sup> Since the site is undeveloped, the potential for encountering hazardous materials during project construction would be low. Therefore, potential public health risks would be less than significant.

According to the Los Gatos General Plan, the project site is located in a fire hazard area. General Plan Policy S.P.2.3 encourages design and siting of new development in fire hazard areas to minimize hazards to life and property, such as fire preventive site design, access, landscaping and building materials, and use of fire suppression techniques. In addition, the project will be required to comply with the following standards contained in the Town's Hillside Development Standards and Guidelines (January 2004) to minimize fire hazards:

- *Building locations shall minimize exposure to wildfires.*
- *A landscape plan shall be provided and will be reviewed by the Town staff for consistency with the Fire Department's recommended plant list. The landscape plan shall create defensible space around the home, and if there is a fire ladder on the property, it shall be eliminated in an environmentally sensitive manner.*
- *Development shall have adequate fire access.*
- *A dependable and adequate water supply for fire protection and suppression purposes, as required by the Santa Clara County Fire Department, shall be provided for all properties.*
- *Water for fire suppression shall be available and labeled before any framing may begin.*
- *Above ground water tanks shall not be located in required setback areas.*

Hillside Development Standards and Guidelines also provide the following recommendations or guidelines for reducing fire hazards:

- *Development should avoid areas subject to severe fire danger. In order to achieve this, development should be set back from the crest of a hill, not be located on or adjacent to slopes greater than 30%, and not be located within densely wooded areas. If this is not possible, measures designed to assure the highest degree of fire prevention and fast effective means of evacuation and fire suppression shall be provided.*
- *The fuel load within a defensible space should be minimized by use of selective pruning, thinning and clearing as follows: removal of flammable species and debris, removal of dead, dying or hazardous trees, mow dead grasses, removal of dead wood from trees and shrubs, and thin tree crowns (maximum of 25 percent).*
- *Discontinuous fuel sources should be created and maintained within a defensible space through use of the following techniques: thin vegetation to form discontinuous groupings of trees or shrubs, limb trees up from the ground, and establish a separation between the lowest branches of a tree and any understory shrubs.*
- *Landscaping within a defensible space should be designed with fire safety in mind. Landscaping in defensible space should be: fire resistant and drought tolerant, predominantly low-growing shrubs and groundcovers (limit shrubs to 30 percent coverage), limited near foundations (height and density).*
- *Above ground tanks should not be located in areas of high visibility..."*

Project consistency with the above policies cannot be determined at this time since no development or landscaping plans have been prepared for proposed Lot 1. Consistency of future development plans with these policies will be considered as part of Architecture and Site review. Although the majority of the

# INITIAL STUDY – 15500 FRANCIS OAKS WAY

Issues (and Supporting Information Sources)	Potentially Significant Impact	Potentially Significant Impact Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
j) Inundation by seiche, tsunami, or mudflow?				X

The project parcel is located on both a south-facing hillside and north-facing hillside located south of Francis Oaks Way. The site is located at an elevation of approximately 610 feet at its northern boundary, descending to as low as 510 feet at the base of the seasonal drainage in the center of the property, and then ascending to approximately 680 feet at its southern boundary. The majority of the project parcel has slopes over 30% except for the area in the vicinity of the existing residence, the proposed building envelope on Lot 1, and the seasonal drainage and dirt road located south of this drainage.

The surface drainage on the undeveloped site is characterized as uncontrolled sheet flow across the property from the northern and southern upper elevations to the seasonal drainage located across the center of project parcel. Storm water runoff from the project site flows into the Town of Los Gatos storm drain system via this seasonal drainage, which drains to Short and Ross Creeks, and ultimately into South San Francisco Bay.

Storm Drainage. No development would occur with the proposed subdivision. However, future development of proposed Lot 1 would result in increased impervious surfaces on the project parcel. The resulting incremental increase in peak surface flows due to these impervious surfaces would be less than significant due to the small size of the affected area.

Flood Hazards. The Santa Clara Valley Water District's (SCVWD) flood zone maps and the Town of Los Gatos Safety Element Flood Hazards Map both indicate that the project site is not located within the 100-year floodplain as defined by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps for the project area. Although the project site is not subject to flooding, runoff from the project site affects flows along Short and Ross creeks. The SCVWD reports that currently there are frequent flooding problems along Short Creek. Therefore, drainage features for any future development proposal on proposed Lot 1 will need to offset any project-related increases in peak flows to minimize any effect on existing flooding problems on Short Creek. As a condition of approval, the Town will: (1) limit post-project 100-year stormwater runoff rates to pre-project rates on Lot 1; (2) require the storage facility to be located within the Least Restrictive Development Area; and (3) require the conceptual design for the storage facility (with conceptual design calculations) to be submitted with the Architecture and Site application for Lot 1. A preliminary analysis by the Town Engineering staff indicates that a 45-foot length of 24-inch drain pipe placed in the existing graded dirt road below the proposed homesite would satisfy this requirement.

Water Quality. New, more stringent water quality regulations of the Clean Water Act have recently been triggered because the NPDES (National Pollution Discharge Elimination System) permit program has failed to protect beneficial uses of Santa Clara County's creeks and the South San Francisco Bay, as evidenced by such observations as violations of ambient water quality criteria, high concentrations of toxic substances, and fish consumption health advisories. These new regulations require that all discharges shall comply with Provision C.3, New and Redevelopment Performance Standards of Order No. 01-024 of the NPDES permit program.

The project site is located within the Ross Creek watershed. Runoff from the site would discharge to the Town's storm drains in Shady Lane, flowing into Short and Ross Creeks. North of Blossom Hill Road, Ross Creek flows mostly through San Jose, joining Guadalupe River approximately five miles

The Los Gatos General Plan does not identify any regionally or locally-important mineral resources on the project site or in its vicinity.

Issues (and Supporting Information Sources)	Potentially Significant Impact	Potentially Significant Impact Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XI. Noise - Would the project result in:</b>				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?			X	
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				X
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X	
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

The Town Noise Ordinance (Chapter 16) restricts construction activities to the hours of 8:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 7:00 p.m. on weekends and holidays. This ordinance also limits noise generation to 85 dBA at the property line or 85 dBA at 25 feet from each individual piece of equipment. Project construction would result in temporary short-term noise increases due to the operation of heavy equipment. Construction noise sources range from about 82 to 90 dBA at 25 feet for most types of construction equipment, and slightly higher levels of about 94 to 97 dBA at 25 feet for certain types of earthmoving and impact equipment. If noise controls are installed on construction equipment, the noise levels could be reduced to 80 to 85 dBA at 25 feet, depending on the type of equipment. With controls, construction noise levels could be made to comply with the Town Noise Ordinance.

Residential uses are generally considered to be noise-sensitive uses or sensitive receptors. There are two residences located north of the project site and they are located approximately 150 to 170 feet from the proposed home site on Lot 1. The existing residence on proposed Lot 2 would also be approximately 150 feet from the proposed home site. At 150 feet, the ordinance noise limit (85 dBA at 25 feet) would result in maximum noise levels of 69 dBA at the closest residences to the west and north. Temporary disturbance (e.g., speech interference) can occur if the noise level in the interior of a building exceeds 45 to 60 dBA.<sup>11</sup> To maintain such interior noise levels, exterior noise levels at the closest residences (with windows closed) should not exceed 70 to 80 dBA and this exterior noise level is used as a significance threshold or criterion. Based on this distance, enforcement noise level standards contained in the Town Noise Ordinance would maintain construction noise levels at acceptable levels. Therefore, it is

and any future development on proposed Lot 1 will be subject to Department requirements, which could include provision of an automatic fire sprinkler system, water tanks, and adequate access (driveway width, grade, and length).

Issues (and Supporting Information Sources)	Potentially Significant Impact	Potentially Significant Impact Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XIV. Recreation -</b>				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			X	
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?				X

The proposed addition of one residential unit would incrementally add new population to the area, and thereby increase the demand for recreational services. This incremental increase would not be expected to be significant given the small size of the project.

<b>XV. Transportation/Traffic - Would the project:</b>				
a) Cause an increase in traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?			X	
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?				X
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?		X		
e) Result in inadequate emergency access?			X	
f) Result in inadequate parking capacity?				X
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				X

The Town's Traffic Impact Policy (Resolution 1991-174) specifies that a project with a traffic impact of 19 or less additional AM or PM peak hour trips could be approved without a comprehensive traffic report if it is determined that the benefits of the project to the Town would outweigh the impact of increased traffic. However, the project would be subject to payment of a traffic mitigation fee. The proposed single-family residence would result in a net increase of 10 trips per day, with 1 trip occurring during the AM peak hour and 1 trip occurring during the PM peak hour. According to the Town's traffic determination, traffic generated by the proposed project would represent a minor impact and no additional traffic studies would be required.



INITIAL STUDY – 15500 FRANCIS OAKS WAY

Issues (and Supporting Information Sources)	Potentially Significant Impact	Potentially Significant Impact Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?			X	
e) Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the projects projected demand in addition to the providers existing commitments?			X	
f) Be served by a landfill with sufficient permitted capacity to accommodate the projects solid waste disposal needs?			X	
g) Comply with federal, state, and local statutes and regulations related to solid waste?				X

Utilities currently extend to other residences on adjacent parcels and, therefore, no major off-site utility improvements would be expected to be required. Proposed plans indicate that the water and sewer lines would be extended south (downhill) from each home, across slopes over 30%. Any future development proposal will be subject to the Town's requirement of directional drilling wherever any utilities would be located on slopes over 30% and preparation/implementation of an erosion control plan (including interim erosion control measures) would reduce potential erosion hazards to a less-than-significant level.

In addition, the proposed alignment of the water and sanitary sewer lines do not allow for connection of other existing homes at the end of Francis Oaks Way (e.g., establishment of easements that would allow for connection of adjacent properties). As part of any future development proposals, the Town will need to consider the appropriate alignments for any proposed water and sanitary sewer lines. Any proposed alignment of these lines will need to allow for connection of other homes at the end of Francis Oaks Way.

<b>XVII. Mandatory Findings of Significance -</b>				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?				X
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X

# NOTICE

RECEIVED

SEP 21 2006

## TOWN OF LOS GATOS ENVIRONMENTAL IMPACT REVIEW

TOWN OF LOS GATOS  
PLANNING DIVISION

### MITIGATED NEGATIVE DECLARATION

**Lead Agency:** Town of Los Gatos  
Community Development Department  
110 East Main Street  
Los Gatos, CA 95031

**Project Title and Location:** 15500 Francis Oaks Way  
Subdivision Application M-06-4  
Negative Declaration ND-06-4

**Project Description:** The project applicants are requesting approval to allow the subdivision of a  $\pm 8.1$ -acre parcel into two lots. Lot 1 would be 1.2 acres and Lot 2 would be  $\pm 6.9$  acres. The existing residence would be located on the 6.9-acre parcel, while the new residence would be constructed on the 1.2-acre parcel. Lot 1 would be a rectangular lot with the easement for Francis Oaks Way located extending along the northern lot boundary within this parcel. Lot 2 would consist of the remainder of the project site, surrounding Lot 1 on three sides, and also including the Francis Oaks Way easement within this parcel along its northern boundary.

In addition to development of a new home, the proposed application would include extension of water and sewer lines from the existing home on Lot 2 and proposed home on Lot 1 to water and sewer lines that are planned to be developed in Shady Lane Extension as part of the recently approved Highlands of Los Gatos project. Proposed plans indicate that the water and sewer lines would be extended south (downhill) from each home, across the drainage that traverses both properties, and then extend westward along an existing dirt road (located parallel to and south of the drainage), eventually connecting with planned water and sewer lines in Shady Lane Extension on the Highlands property to the west.

**Background:** Francis Oaks Way currently provides access to approximately 18 existing homes. Upper Francis Oaks Way (the section above or south of 15410) currently provides access to six existing homes. The Town recently approved a planned development (Highlands of Los Gatos) and its boundary adjoins the project parcel's southern and western boundaries. The approved development will create 19 residential lots on the 66-acre development site. This development includes an option for an emergency access connection to Francis Oaks Way if a viable design can be identified; access to the Highlands project will be provided from Shady Lane, not Francis Oaks Way. As part of the Highlands development, the project sponsor proposed to make available to neighbors the option to connect to the project's public water and sewer systems. As part of the Highlands development, a water main will be extended westward from the existing water tanks above Greenridge Terrace (located east of the site), continue westward along Francis Oaks Way (adjacent to the proposed Lot 2), and terminate at the existing water tanks on proposed Lot 1.

The  $\pm 8.1$ -acre project parcel is located on the south side of upper Francis Oaks Way. At present, there is one existing single-family residence on the existing project parcel (15500 Francis Oaks Way). Land uses adjoining the project parcel's northern boundary include two lots, both developed with single-family residences (the westerly home is currently under construction), across Francis Oaks Way. In addition,

Guidelines (January 2004). Any future home's lighting design would be evaluated by the Town during the Architecture and Site review process.

**2. Agriculture Resources:** The project parcel is currently developed with one single-family residence and the site's agricultural potential is limited by existing surrounding residential development, topography, and current zoning. Therefore, the project would not adversely affect any existing agricultural resources at the site.

**3. Air Quality:** The project would be consistent with the Bay Area Air Quality Management District's (BAAQMD) *Clean Air Plan (CAP)*. The most recent CAP was completed in 2000. The consistency of the proposed project with the CAP is determined by comparing the project's consistency with the Los Gatos General Plan. Since the CAP is based on the Town's General Plan land use designations and population projections of the Association of Bay Area Governments (ABAG) that were in effect at the time the CAP was approved, consistency with the General Plan would indicate consistency with the CAP. The project would be consistent with the use and density allowed on the project site by the Los Gatos General Plan, and therefore, the project would be consistent with the CAP.

The San Francisco Bay Area Air Basin is classified by the BAAQMD as non-attainment for ozone and inhalable particulates (PM<sub>10</sub>). According to the Town Planning Department, the proposed project would result in a net traffic increase of 10 daily trips, with 1 AM peak hour trip and 1 PM peak hour trip. Air emissions increases associated with the proposed project would not be considered significant since the size of the proposed project would not exceed the Bay Area Air Quality Management District's (BAAQMD) threshold levels for potential significance. The BAAQMD threshold level for potential significance is 375 single-family units. At or above this size, traffic generated by the project would have the potential to generate significant local and regional air quality impacts, and an air quality impact assessment would need to be prepared and submitted to the BAAQMD for review.

Adjacent residential uses are considered to be sensitive receptors. Proposed grading activities would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions. The proposed Lot 1 would be 1.2 acres, but project construction would result in surface disturbance of less than one acre. The BAAQMD does not require quantification of construction emissions, but considers any project's construction-related impacts to be less than significant if required dust-control measures are implemented. The Town's standard dust control conditions require implementation of the BAAQMD's standard dust control measures (required on sites of three acres or less), which would mitigate the project's construction-related air quality impacts to a less-than-significant level.

**4. Biological Resources:** The ±8.1-acre site generally consists of two hillsides separated by a seasonal drainage that enters the project site at its southeastern corner, extends through the project site in a northwestern to western direction, and leaves the property at its western perimeter. The drainage swale constitutes one of the three biotic habitats on the project site; the southern (north-facing) hillside on the site is characterized as oak woodland while the northern hillside includes large areas of non-native annual grassland with oaks scattered on the lower part of this hillside immediately above the drainage swale. Project plans indicate 41 trees (12 on proposed Lot 1 and 29 on proposed Lot 2), primarily oaks and some pines, on the lower part of the northern hillside area; the site's existing residence on proposed Lot 2 is located on the upper portion of the property in the northwestern corner of the site. Portions of the northern hillside have been cleared by construction activities associated with the installation of two water tanks required for fire control at the existing residence. The seasonal drainage on the project site is a segment of the drainage that originates on and re-enters the Highlands property to the west.

This description of seasonal drainage channel habitat would also apply to the segment of the drainage channel that traverses the project site, including the portion within the proposed Lot 1. As part of the public agency consultation process for the Highlands EIR, the U.S. Army Corps of Engineers (USACE) indicated that there are no jurisdictional waters of the United States on the Highlands site, including the seasonal drainage channel discussed above. To the extent that the project site's seasonal drainage is a middle segment of the drainage channel referenced by the USACE, it could be inferred that the USACE would also have no jurisdiction over the drainage channel and associated habitat on the project site.

In order to determine the potential for USACE jurisdiction over the seasonal drainage swale on the project site, the project applicant retained H.T. Harvey & Associates to assess the drainage conditions and characteristics of the seasonal channel that crosses the project site. The consultant conducted a review of previous background studies and performed a field survey of the drainage swale to determine the potential for agency jurisdiction over the channel. Based on the review of background information and field inspection, the consultant concluded that:

“field characteristics used by the Corps or CDFG in establishing jurisdiction are entirely absent on site. Nowhere on the property was there a co-occurrence of the requisite three parameters (hydrophytic vegetation, hydric soils and wetland hydrology). The drainage swale is without an “ordinary flow” and there is a total absence of wetland or riparian vegetation along this reach of the swale.”

Consequently, no permits from the USACE or CDFG would be required for the proposed subdivision of the project site or for the future development of one single-family home on Lot 1.

**5. Cultural Resources:** The project site is currently undeveloped, and the potential for encountering cultural resources during project construction would be low due to the site's relatively steep topography. There is a seasonal drainage that traverses the project property. Although there is typically a higher potential for encountering archaeological resources in areas adjacent to or near a river or creek, the seasonal nature of this drainage channel combined with the steep topography of the site and its vicinity would limit the potential for encountering cultural resources.

**6. Geology and Soils:** A review of the Town's hazards maps indicates that the project site has a high potential for fault rupture, moderate potential for slope stability hazard (moderate hazard adjacent to Shady Lane), moderate to low potential for seismic shaking, low shrink-swell potential, no potential for liquefaction, and very high erosion hazard. Debris flow hazards were identified over most of the project property, including all of proposed Lot 1. The Town's Fault Map identifies lineation indicative of faulting at the eastern boundary of the project property and proposed Lot 1. Given the site's sloping topography, there would be a high potential for erosion hazards if soils are subject to concentrated runoff flows. Future development plans for proposed Lot 1 will be subject to Architecture and Site review, and at a minimum, standard Town conditions will include provision of a complete erosion control plan (including interim erosion control measures and drainage controls such as energy dissipators), and such requirements are expected to reduce potential erosion hazards to a less-than-significant level.

A detailed engineering geologic investigation was prepared by Steven F. Connelly, C.E.G. in March 2006 and a peer review of the Connelly report was completed for the Town by Geomatrix Consultants in May 2006. Copies of these studies are on file at the Los Gatos Community Development Department. This study involved review of published maps and aerial photographs, excavation of three test pits, and a site reconnaissance. This investigation concluded that the proposed subdivision and construction of a new residence is feasible and the site appears to be geologically suitable for the proposed development provided it is constructed according to recommendations of the project geotechnical engineering firm, Redwood Geotechnical, Inc. In its peer review of this report, Geomatrix identified two concerns: (1)

stability analysis is completed and project plans indicate construction methods for water and sewer line extensions. The Building Division of the Community Development Department will be responsible for ensuring that all geotechnical requirements are properly implemented during construction.

**7. Hazards and Hazardous Materials:** The project site is not included on any Hazardous Wastes and Substances Sites List. Since the site is undeveloped, the potential for encountering hazardous materials during project construction would be low. Therefore, potential public health risks would be less than significant.

According to the Los Gatos General Plan, the project site is located in a fire hazard area. General Plan Policy S.P.2.3 encourages design and siting of new development in fire hazard areas to minimize hazards to life and property, such as fire preventive site design, access, landscaping and building materials, and use of fire suppression techniques. In addition, the project will be required to comply with the following standards contained in the Town's Hillside Development Standards and Guidelines (January 2004) to minimize fire hazards:

- *Building locations shall minimize exposure to wildfires.*
- *A landscape plan shall be provided and will be reviewed by the Town staff for consistency with the Fire Department's recommended plant list. The landscape plan shall create defensible space around the home, and if there is a fire ladder on the property, it shall be eliminated in an environmentally sensitive manner.*
- *Development shall have adequate fire access.*
- *A dependable and adequate water supply for fire protection and suppression purposes, as required by the Santa Clara County Fire Department, shall be provided for all properties.*
- *Water for fire suppression shall be available and labeled before any framing may begin.*
- *Above ground water tanks shall not be located in required setback areas.*

Hillside Development Standards and Guidelines also provide the following recommendations or guidelines for reducing fire hazards:

- *Development should avoid areas subject to severe fire danger. In order to achieve this, development should be set back from the crest of a hill, not be located on or adjacent to slopes greater than 30%, and not be located within densely wooded areas. If this is not possible, measures designed to assure the highest degree of fire prevention and fast effective means of evacuation and fire suppression shall be provided.*
- *The fuel load within a defensible space should be minimized by use of selective pruning, thinning and clearing as follows: removal of flammable species and debris, removal of dead, dying or hazardous trees, mow dead grasses, removal of dead wood from trees and shrubs, and thin tree crowns (maximum of 25 percent).*
- *Discontinuous fuel sources should be created and maintained within a defensible space through use of the following techniques: thin vegetation to form discontinuous groupings of trees or shrubs, limb trees up from the ground, and establish a separation between the lowest branches of a tree and any understory shrubs.*
- *Landscaping within a defensible space should be designed with fire safety in mind. Landscaping in defensible space should be: fire resistant and drought tolerant, predominantly low-growing shrubs and groundcovers (limit shrubs to 30 percent coverage), limited near foundations (height and density).*
- *Above ground tanks should not be located in areas of high visibility..."*

The project site is located within the Ross Creek watershed. Runoff from the site would discharge to the Town's storm drains in Shady Lane, flowing into Short and Ross Creeks. North of Blossom Hill Road, Ross Creek flows mostly through San Jose, joining Guadalupe River approximately five miles downstream of the project site. Stream flows ultimately discharge into San Francisco Bay via Alviso Slough. Ross and Short creeks are Santa Clara Valley Water District (SCVWD) water management facility, although these creeks are located approximately one-half mile west of the site.

Any future development proposal on Lot 1 will be required to meet Town C.3 requirements. Possible approaches to meeting Town requirements include: collection of runoff using rainwater leaders and connection to a closed pipe system to satisfy geotechnical recommendations; use of directional drilling techniques to construct any pipes proposed to be located on slopes greater than 30%; discharge of storm drains to an energy dissipater to be located near the existing swale at the bottom of the slope, or to a dry well; provision of drainage swales on both the left and right sides of the house to handle yard runoff; planting of the drainage swales with grasses or groundcovers to stabilize the soil.

**9. Land Use and Planning:** The Los Gatos General Plan designates the project site for "Hillside Residential" and this designation allows for residential uses at densities of zero to one unit per acre. The Zoning Ordinance designates the project site as "Hillside Residential (HR-2½)," which suggests lot sizes of 2½ to 10 acres for each dwelling unit, but the minimum required lot size is 40,000 square feet. The proposed subdivision would create one 1.2-acre parcel (Lot 1) and a second 6.9-acre parcel (Lot 2); the proposed subdivision would be consistent with the minimum density allowed by the Zoning Ordinance and General Plan as well as the minimum required lot size.

The project site is located adjacent to existing residential uses. There are residences developed or approved for development on all surrounding contiguous parcels. The proposed residential use would be consistent with surrounding single-family residential uses. Therefore, the proposed project would not pose any land use compatibility problems.

**10. Mineral Resources:** The Los Gatos General Plan does not identify any regionally or locally-important mineral resources on the project site or in its vicinity.

**11. Noise:** The Town Noise Ordinance (Chapter 16) restricts construction activities to the hours of 8:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 7:00 p.m. on weekends and holidays. This ordinance also limits noise generation to 85 dBA at the property line or 85 dBA at 25 feet from each individual piece of equipment. Project construction would result in temporary short-term noise increases due to the operation of heavy equipment. Construction noise sources range from about 82 to 90 dBA at 25 feet for most types of construction equipment, and slightly higher levels of about 94 to 97 dBA at 25 feet for certain types of earthmoving and impact equipment. If noise controls are installed on construction equipment, the noise levels could be reduced to 80 to 85 dBA at 25 feet, depending on the type of equipment. With controls, construction noise levels could be made to comply with the Town Noise Ordinance.

Residential uses are generally considered to be noise-sensitive uses or sensitive receptors. There are two residences located north of the project site and they are located approximately 150 to 170 feet from the proposed home site on Lot 1. The existing residence on proposed Lot 2 would also be approximately 150 feet from the proposed home site. At 150 feet, the ordinance noise limit (85 dBA at 25 feet) would result in maximum noise levels of 69 dBA at the closest residences to the west and north. Temporary disturbance (e.g., speech interference) can occur if the noise level in the interior of a building exceeds 45 to 60 dBA. To maintain such interior noise levels, exterior noise levels at the closest residences (with windows closed) should not exceed 70 to 80 dBA and this exterior noise level is used as a significance threshold or criterion. Based on this distance, enforcement noise level standards contained in the Town Noise Ordinance would maintain construction noise levels at acceptable levels. Therefore, it is

MITIGATED NEGATIVE DECLARATION – 15500 FRANCIS OAKS WAY

Construction-related traffic increases due to workers, inspections, and equipment/materials deliveries could, at times, generate up to 10 or 15 trips per day during the daytime hours (or an average daytime volume of up to 2 trips per hour). Such a temporary traffic increase would not be significant from a traffic capacity standpoint. However, local residents could be subject to delays on the narrow one-lane sections of Francis Oaks Way when equipment or material delivery trucks are using this road. In addition, use of Francis Oaks Way for equipment and material deliveries could damage the road surface. The following measure will be required to minimize potential construction-related traffic impacts:

**MITIGATION:** Prior to issuance of any permit, the applicant will complete a pre-construction pavement condition survey of Francis Oaks Way to document road conditions. Prior to issuance of any certificate of occupancy, the applicant will conduct a post-construction survey to determine whether any road damage occurred as a result of project construction. The project applicant will be responsible for completing any required road repairs prior to receipt of their certificate of occupancy.

**MITIGATION:** The project sponsor will be required to work with the Engineering Division of the Parks and Public Works Department to develop a traffic control plan (e.g., requiring flagpersons along one-lane sections of Francis Oaks Way for equipment/material deliveries, specifying delivery hours, and notifying neighbors in advance) to minimize the potential for traffic safety problems and delays to local residents.

**MITIGATION MONITORING:** The Engineering Division of the Parks and Public Works Department will be responsible for reviewing the applicant's pre-construction pavement condition survey of the road prior to issuance of any permit, reviewing and approving the applicant's post-construction pavement condition survey prior to issuance of any certificate of occupancy, and reviewing and approving the traffic control plan to be implemented during project construction.

**Utilities and Service Systems:** Utilities currently extend to other residences on adjacent parcels and, therefore, no major off-site utility improvements would be expected to be required. Proposed plans indicate that the water and sewer lines would be extended south (downhill) from each home, across slopes over 30%. Any future development proposal will be subject to the Town's requirement of directional drilling wherever any utilities would be located on slopes over 30% and preparation/implementation of an erosion control plan (including interim erosion control measures) would reduce potential erosion hazards to a less-than-significant level.

In addition, the proposed alignment of the water and sanitary sewer lines do not allow for connection of other existing homes at the end of Francis Oaks Way (e.g., establishment of easements that would allow for connection of adjacent properties). As part of any future development proposals, the Town will need to consider the appropriate alignments for any proposed water and sanitary sewer lines. Any proposed alignment of these lines will need to allow for connection of other homes at the end of Francis Oaks Way.

Copies of the Initial Study used to make the above recommendation are on file and available for public inspection during regular business hours at the Town Community Development Department, 110 East Main Street, Los Gatos, California.

9/21/06  
Date

  
Bud N. Lortz, Director of Community Development

**ATTACHMENT "A"**

**Appeal of Subdivision Application M-06-4 / ND-06-4**

1. The Planning Commission erred or abused its discretion because the findings for denial of M-06-4 were not supported by substantial evidence in the record.
  - The Planning Commission erred or abused its discretion in finding that M-06-4 was not consistent with the Town of Los Gatos Zoning Code.
  - The Planning Commission erred or abused its discretion in finding that M-06-4 was not physically suitable (proposed density and/or type of development) for the site.
2. The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council: The application of the Town of Los Gatos Zoning Code specifically pertaining to lot area, lot density and minimum land area.
  - The Planning Commission did not apply the Town of Los Gatos Zoning Code to M-06-4 but relied on the Hillside Development Standards and Guidelines as the basis for the denial of M-06-4.





Time	Speaker	Note
<u>9:39:34 PM</u>	Randy Tsuda	<b>Item #5 - 15500 Francis Oaks Way</b> - Subdivision Application M-06-4, Negative Declaration ND-06-4 - Requesting approval of a two lot subdivision on property zoned HR-2½. No significant environmental impacts have been identified and a Mitigated Negative Declaration is recommended. APN 527-11-005. PROPERTY OWNER/APPLICANT: Mike and Ann MoffatMr. Tsuda gave staff overview
<u>9:45:36 PM</u>	Mike Moffat	Summarized the process he went through to reach this point, and requested approval of the application.
<u>9:48:48 PM</u>	Grady Johnson	Supports the project. Working on Road Committee and houses at the top of the hill pay a larger share. An additional home would help reduce the cost of road maintenance.
<u>9:50:09 PM</u>	Sandy Harris	Here to offer his support of the project. If approved, would like to have a condition that the emergency access from Francis Oaks Way to the Highlands PD be facilitated through the Moffat property (a small area of the EVAE would need to cross the corner of the property).
<u>9:51:16 PM</u>	Commissioner Quintana	Asked Mr. Harris to explain why he is in support of the project. Mr. Harris said the lot is large enough for a subdivision and there is a definite building site.
<u>9:52:11 PM</u>	Ray Davis	Speaking in the public interest, the proposed lot size should be at least 2.5 acres. A land use issue involving a 20% slope requires CEQA review. The public record needs to be clear that if this subdivision is approved, no further subdivision should be allowed.
<u>9:56:03 PM</u>	Diane McLaughlin	Francis Oaks Way resident. Offered a real estate flyer that states that the property is not subdividable and a statement by Tony Jeans that it is not subdividable. Mr. Jeans noted that there is only one building site on the property. The Moffats agreed to a scenic easement from the 660 contour line. Although they were told that the property could not be split, they purchased the property. She does not believe they need to subdivide the property for financial reasons.
<u>9:59:59 PM</u>	Gary Harwin	Francis Oaks Way resident. The applicant is proposing a subdivision that is gerrymandered. The Code leaves room for interpretation, although the Hillside Standards are more clear. If the road is excluded, the slope density formula would not allow two lots. The proposed subdivision map includes inconsistencies that need further review.

Time	Speaker	Note
10:03:26 PM	Jim Dunlay	Questioned whether the slope density calculations that have been done are correct. The building site is in an area with 20-30% slope. The building site should be reassessed to more accurately determine the slope. Questions the underlying accuracy of the tentative map. Would like to have the map looked at further to determine if the lot is actually divisible.
10:06:51 PM	Commissioner Kane	Asked where the smaller lot size of 7.9 acres came from. Fletcher Parsons explained how he checked the slope density calculation. Using the smaller area, the slope calcs were run using the Town topo as well as the topo from Sandy Harris' project and both times we came up with a number above 2.
10:09:32 PM	Lee McLaughlin	Francis Oaks Way resident. This project is clearly not ready for prime time and the proposed building site is on a very steep slope. The Hillside Standards specify a 25 foot height while the Code allows 30 feet. Areas for public roads only are taken out for slope density, why not private roads as well. If the area of the private road is subtracted, this land is marginal for development. The proposed subdivision violates numerous Town goals and should be denied.
10:12:49 PM	David Weissman	Removing the large oak tree and replacing it with six new trees is not biologically responsible and the Mitigated Negative Declaration should not be accepted. Just because someone wants to build a home here does not mean it should be allowed. This site is not physically suited to the type of development that is proposed here.
10:16:00 PM	Mike Moffat	With regard to the slope density calculations, a civil engineer, a surveyor and the Town engineer all verified the numbers. The past 44 lots that have been approved have all been done under the same rules and he has followed these. The current precedent is well established and has been followed.
10:18:22 PM	Commissioner Bourgeois	Walk through your site planning process for us. Mr. Moffat said the building site was chosen because it has access, it is close to other homes, it is on slopes less than 30%. Commissioner Bourgeois asked about accessing the eastern portion of the property. Mr. Moffat is amenable to changing the configuration of the lot.
10:21:04 PM	Commissioner Quintana	Asked about erosion structures shown on the plan. Mr. Moffat said it is a temporary feature that will be there during construction. Commissioner Quintana asked about plastic covers on the site. Mr. Moffat said those are for the septic system. The new house and the current house will be connected to the sewer and to water.

Time	Speaker	Note
10:23:31 PM	Chair Talesfore	Asked the Town Attorney to speak to the question about the Town Code and the HDS&G with regard to density. Mr. Korb said the slope density section of the Code is very difficult to interpret and apply. The HDS&G does include a statement on slope density that is inconsistent with the Code. The Code applies first and foremost. He provided clarification on density and lot size versus lot area.
10:31:10 PM	Commissioner O'Donnell	Motion to deny the application as the proposed subdivision is not consistent with the zoning and that the proposed development is not appropriate for the site. Not being able to close the legal description is a concern. Motion seconded by Commissioner Rice.
10:33:46 PM	Commissioner Kane	If this goes to Council, would like to ask for guidance on the 2.5 acre lot size and when a road is a road and when it isn't. The logic to excluding a public road would probably support excluding a private road. Mr. Korb responded.
10:36:02 PM	Commissioner Quintana	In support of the motion, cited General Plan reference to zoning, and development standards and guidelines and the Hillside Specific Plan. Proposal is also in conflict with HSP policies. Unless a Planned Development is proposed, exceptions can't be made. <b>The motion for denial passed unanimously.</b>
10:39:02 PM	Orry Korb	Provided appeal rights.
10:39:57 PM	Chair Talesfore	<b>Item # 6- 23-27 N. Santa Cruz Avenue</b> - Architecture and Site Application S-07-12, Conditional Use Permit U-07-09 Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant (Vittoria) and a change in alcohol service on property zoned C-2, APN 510-44-033, 034, and 035. PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC
10:40:43 PM	Randy Tsuda	This item was advertised as an Architecture and Site application for modifications to the exterior of two buildings and a modification to the Conditional Use Permit to expand the Vittoria restaurant. It is highly unusual that we would do it this way, but the property owner would like to have approval of the exterior improvements to further negotiations with a tenant.
10:43:27 PM	Commissioner O'Donnell	This is like saying let's design the deck chairs before we design the Titanic.
10:44:29 PM	Chair Talesfore	If the CUP does not get passed, what happens with the application?
10:44:59 PM	Louis Dorcich	Project architect, available to answer questions. Commissioner Rice clarified that the request is to have the exterior approved and the rest of the application will be discussed next month.

Date: December 8, 2006  
For Agenda Of: December 13, 2006  
Agenda Item: 5

REPORT TO: The Planning Commission  
FROM: Director of Community Development  
LOCATION: 15500 Francis Oaks Way  
Subdivision Application M-06-4  
Negative Declaration ND-06-4

Requesting approval of a two lot subdivision on property zoned HR-2½. No significant environmental impacts have been identified as a result of this project and a Mitigated Negative Declaration is recommended. APN 527-11-005.

PROPERTY OWNER/APPLICANT: Mike & Ann Moffat

DEEMED COMPLETE: November 3, 2006

FINAL DATE TO TAKE ACTION: December 23, 2006

FINDINGS: ■ As required by Section 66474 of the State Subdivision Map Act.

ACTION: The decision of the Planning Commission is final unless appealed within ten days.

#### ENVIRONMENTAL

ASSESSMENT: It has been determined that the project could have significant impacts on the environment. However, if all mitigation measures listed in the Initial Study and Mitigated Negative Declaration are implemented, the project impacts would be reduced to less than significant levels. Consequently, a Mitigated Negative Declaration is recommended.

#### RECOMMENDATION

SUMMARY: Approval, subject to conditions.

- EXHIBITS:
- A. Location Map (one page)
  - B. Required Findings (one page)
  - C. Recommended Conditions of Approval (four pages)
  - D. Mitigation Monitoring Program (two pages)
  - E. Mitigated Negative Declaration (*previously distributed under separate cover*)
  - F. Applicant's letter (11 pages), received February 23, 2006
  - G. Email from Dave Weissman (two pages), received November 27, 2006
  - H. Letter from John Magner (one page), received December 6, 2006
  - I. Letter from Gary Harwin (two pages), received December 7, 2006

### Francis Oaks Way

Francis Oaks Way is a narrow, winding roadway that does not meet Town public street standards. Topographic constraints preclude the road from being widened for much of its length. Pull-outs were installed as part of a previous project to help facilitate vehicles passing on narrow stretches of the road. Neighbors have asked whether further improvements to Francis Oaks Way can be required as a condition of subdivision approval. Road widening can only be required if there is adequate justification. Either the Town would need to show that the existing road is a threat to public safety, or the Santa Clara County Fire Department would need to show that adequate protection cannot be provided after the project. The Fire Department did not request road widening when reviewing the project. Engineering staff determined that while the road does not conform to current development standards for new improvements, it still has capacity to accommodate the proposed traffic. The Town Traffic Engineer did not find any justification for widening the road.

### New Building Site

The proposed building site for the 1.2 acre parcel would be accessed from Francis Oaks Way. The applicant submitted conceptual development plans for a new residence of approximately 5,700 square feet (see Exhibit G). The plans were provided to demonstrate that the proposed second lot has a feasible building site that can be accessed with a conforming driveway and that can support a relatively large home that complies with the Town's Hillside Development Standards & Guidelines (HDS&G). There is a specimen oak tree within the proposed building site that would need to be removed with this particular plan.

The conceptual design presents a relatively bulky and massive rear elevation with a high stem wall, and the lower level deck is six to seven feet above the grade, which could be interpreted as a three story appearance. In addition, the building site is limited and would not allow for any usable outdoor space other than decks or balconies. Because the front setback is measured from property line and not the edge of the road, the house is closer than 30 feet to the edge of pavement. This also occurs with the home at 15491 Francis Oaks, directly across the road. Other homes in the area have greater setbacks from the road, including the existing home on the project site. An Architecture & Site application would be required for the new residence, and it could be of a different design and footprint than shown on the conceptual plans.

### Lot Configuration

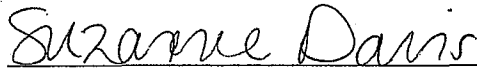
The proposed lot lines are very unusual in that the two parcels would not be of similar size. The smaller parcel is a rectangular shape that does not flow with the current property configuration and would be surrounded on three sides by the larger parcel. The Commission could, as a condition of approval, require the lot configuration to be modified and/or the size of the smaller parcel to be increased.

C. RECOMMENDATION:

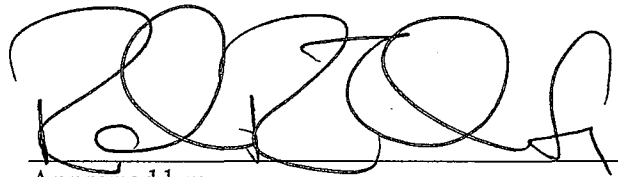
Section 66474 of the State Subdivision Map Act lists seven findings relative to approval of a tentative map. If any of these findings can be made, it is grounds for denial of the proposed subdivision.

The Planning Commission should give careful consideration to findings C and D (Exhibit B). If the Commission is unable to make any of the findings, it should adopt the Mitigation Monitoring Program (Exhibit D) and approve Tentative Map Application M-06-04-subject to the conditions in Exhibit C. In this event, staff recommends adding conditions requiring the two lots to be of a more equivalent size, and the westerly lot line to be adjusted to increase the building envelope.

If the Commission is able to make any of the findings specified in Exhibit B, the application should be denied.



Prepared by:  
Suzanne Davis, Associate Planner



Approved by:  
Bud N. Lortz, Director of Community Development

BNL:SD

cc: Mike & Ann Moffat, 15500 Francis Oaks Way, Los Gatos, CA 95032  
Dave Weissman, 15431 Francis Oaks Way, Los Gatos, CA 95032





**PLANNING COMMISSION MEETING - DECEMBER 13, 2006**  
**REQUIRED FINDINGS FOR:**

15500 Francis Oaks Way  
Subdivision Application M-06-4  
Negative Declaration ND-06-4

Requesting approval of a two lot subdivision on property zoned HR-2½. No significant environmental impacts have been identified as a result of this project and a Mitigated Negative Declaration is recommended. APN 527-11-005.

PROPERTY OWNER/APPLICANT: Mike and Ann Moffat

**FINDINGS:**

***State Subdivision Map Act:***

In order to deny the application, the Planning Commission must make one of the following findings, as required by Section 66474 of the State Subdivision Map Act:

- a. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- b. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- c. That the site is not physically suitable for the type of development.
- d. That the site is not physically suitable for the proposed density of development.
- e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

N:\DEV\FINDINGS\FOW15500-TM.wpd

**PLANNING COMMISSION - DECEMBER 13, 2006**  
**CONDITIONS OF APPROVAL**

15500 Francis Oaks Way  
Subdivision Application M-06-4  
Negative Declaration ND-06-4

Requesting approval of a two lot subdivision on property zoned HR-2½. No significant environmental impacts have been identified as a result of this project and a Mitigated Negative Declaration is recommended. APN 527-11-005.

PROPERTY OWNER/APPLICANT: Mike and Ann Moffat

**TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:**

*Planning Division*

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved on December 13, 2006 and noted as received by the Town on July 28, 2006. Any changes or modifications to the approved plans shall be approved by the Community Development Director or the Planning Commission depending on the scope of the change(s).
2. **EXPIRATION OF APPROVAL.** The Tentative Map application shall expire two years from the date of approval if a Final Map has not been recorded, pursuant to Sections 24.20.070 and 24.70.035 of the Subdivision Ordinance.
3. **COMPLIANCE MEMORANDUM.** The applicant shall prepare and submit a memorandum with the building permit, detailing how each of these Conditions of Approval have or will be addressed.
4. **\*\*BIOLOGICAL RESOURCES MITIGATION MEASURE.** A certified arborist shall evaluate the proposed home design for direct and indirect effects of proposed foundation and home construction, and potential changes in drainage. The design of the foundation and drainage facilities shall be modified as necessary in accordance with the arborist's recommendations. The arborist shall provide detailed measures to protect trees during construction of the proposed home and associated facilities. The arborist shall specifically address drainage from the roof which could change drainage conditions at oak root zones located immediately adjacent to the home.

**TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:**

*Engineering Division*

5. **\*\*GEOLOGY AND SOILS MITIGATION MEASURE-1.** Trenching for proposed water and sewer lines shall be prohibited on both lots. These lines shall be constructed using a method that does not disturb the ground surface (e.g. bore and jack on slopes greater than 30%).
6. **\*\*GEOLOGY AND SOILS MITIGATION MEASURE-2.** A screening-level slope stability analysis of parcel A shall be completed as required by the 2002 Seismic Hazards Mapping Act, prior to issuance of a building permit.

shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.

19. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
20. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
21. PRECONSTRUCTION PAVEMENT SURVEY. Prior to issuance of any permit, the project Applicant shall complete a pavement condition survey documenting the extent of existing pavement defects using a 35-mm or digital video camera. The survey shall extend the full length of Francis Oaks Way between Blossom Hill Road and the project site. In addition, a pavement deflection analysis conforming to the same limits as the photographic survey shall be performed to determine pavement strength. The results shall be documented in a report and submitted to the Town for review. This condition may be waived if the applicant agrees that Francis Oaks Way will not be used for ingress and egress of contractor vehicles, or for delivery of equipment or materials.
22. POSTCONSTRUCTION PAVEMENT SURVEY. The project Applicant will complete a pavement condition survey and pavement deflection analysis to determine whether road damage occurred as a result of project construction and whether there were changes in pavement strength. Rehabilitation improvements required to restore the pavement to pre-construction condition and strength shall be determined using State of California procedures for deflection analysis. The results shall be documented in a report and submitted to the Town for review and approval. The Applicant shall be responsible for completing any required road repairs prior to release of the faithful performance bond. This condition may be waived if Francis Oaks Way was not used for ingress and egress of contractor vehicles, or for delivery of equipment or materials.
23. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Engineering Division of the Parks & Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the San Francisco Bay Regional Water Quality Control Board for projects disturbing more than one acre. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim erosion control method shall include, but are not limited to: silt fences, fiber rolls (with locations and details), erosion control blankets, Town standard seeding specification, filter berms, check dams, retention basins, etc. Provide erosion control measures as needed to protect downstream water quality during winter months. The grading, drainage, erosion control plans and SWPPP shall be in compliance with applicable measures contained in the amended provisions C.3 and C.14 of Order 01-024 of the amended Santa Clara County NPDES Permit.

MITIGATION MONITORING PLAN

DATE: December 13, 2006

PROJECT: 15500 Francis Oaks Way, M-06-04, ND-06-04

<u>Mitigation</u>	<u>Monitoring Action</u>	<u>Responsibility</u>	<u>Timing</u>
<b>BIOLOGICAL RESOURCES</b>			
A certified arborist shall evaluate the proposed home design for direct and indirect effects of proposed foundation and home construction as well as potential changes in drainage. The design of the foundation and drainage facilities shall be modified as necessary in accordance with the arborist's recommendations. In addition, the arborist shall provide detailed measures to protect trees during construction of the proposed home and associated facilities. The arborist shall specifically address drainage from the roof, which could change drainage conditions at oak root zones located immediately adjacent to the home.	Required as a condition of approval.	Directors of Parks & Public Works & Community Development	A&S review, Building plan check & during construction
<b>GEOLOGIC HAZARDS</b>			
Trenching for proposed water and sewer lines on proposed Lots 1 and 2 shall be prohibited. These lines shall be constructed using a method that does not disturb the ground surface (e.g., bore and jack on slopes greater than 30 percent).	Required as a condition of approval.	Director of Parks & Public Works	Prior to and during construction
Prior to issuance of a building permit, a screening-level slope stability analysis of proposed Lot 1 shall be completed as required by the 2002 Seismic Hazards Mapping Act.	Required as a condition of approval.	Director of Parks & Public Works	Prior to and during construction

Date: January 30, 2006

RECEIVED

FEB 23 2006

Mike & Ann Moffat  
15500 Francis Oaks Way  
Los Gatos, CA 95032

TOWN OF LOS GATOS  
PLANNING DIVISION

Re: Moffat Subdivision

It states in the Introduction to the Town's General Plan, "Los Gatos is home. It is the type of community people want to live in because they feel a sense of belonging". That statement describes exactly how we feel about the Town of Los Gatos. It is our home.

We lived on a street name Kunkel Dr. for 18 years. Kunkel is one of those small fingers of San Jose that is surrounded on three sides by Los Gatos. In just a few short blocks, the city name would change to Los Gatos. Due to our close proximity we became virtual Los Gatos residents. What does that mean? On an every day basis we patronized the business community and attended the many wonderful events Los Gatos sponsors. We love the farmers market, the Wine Festival, Music in the Park, and the many other events that occur in the community. We take our family on hiking and biking outings to St. Joseph hilltop, Vasona Park and all along the Los Gatos creek trail. When my wife and I have a rare evening to ourselves, we always select one of the many fantastic restaurants to enjoy and then take a walk down North Santa Cruz Avenue. We love meeting our friends or running into them while biking and shopping. We love the small Town feel and strong sense of community that exists in Los Gatos. These and many other reasons are why we call Los Gatos our home. In the past 5 years both our desire to become true Los Gatos residents and a lot of luck enabled us to purchase and build a home here on Francis Oaks Way. We selected this site for its rural feel and close proximity to the Town. It is just a short bike ride to Vasona, the Los Gatos creek trail and the Town center. We wanted a place where our children could play and a place where our children could bring their children to play and see Grandma and Grandpa.

When we purchased the parcel of land that our home resides on in April of 2000, the stock market was strong and the valley was enjoying the second gold rush to hit California in the last 150 years. We had no intentions to subdivide our land.

So what has changed? Two major events have affected us that have caused us to view the world differently. One is the burst of the gold rush bubble. Like many others we thought that the stock market could not go any lower and that it would come back each time it slipped further and further down from its high. This had an obvious affect on our over all assets and created a new problem we had not foreseen. How do we pay the ever-increasing property taxes on our new home? The idea of working the rest of our lives to pay the taxes on our house is very un-appealing and not realistic. At some point we would have to sell our home in Los Gatos, as we would not be able to keep up with the tax demand. Secondly, a new development called the Los Gatos Highlands is in the final approval stages with the Town. The development surrounds about 65% of the parcel we live on. This new development will bring in city services to 19 lots and enable us to move off our current water and septic systems. The addition of these new city services will enable the subdivision of our land while still protecting the environment.

2. Los Gatos wants to protect the natural environment through minimizing grading, protecting existing trees, management of sewer facilities and the planning for the use of solar power. This position is stated repeatedly as follows:

### **Los Gatos Hillside Specific Plan 1978**

#### ▪ **Land Use**

##### Section 1.3 Policies

2. Land use in the hillside planning area should be limited to agriculture and single-family detached use.

#### ▪ **2.0 Facilities and Services**

##### Section 2.3 Policies

1. Development proposals shall be approved only if the necessary road, water, sanitation and other services required for the proposed use are provided to the property

##### 2.4 Implementation

1. Availability of Services for Development

a. Sewage Disposal Services:

(1) Sewer service shall be by sanitary sewer whenever practical

b. Domestic Water

(1) Water Service shall be provided by recognized public utility whenever possible.

#### ▪ **3.0 Circulation**

##### Section 3.3 Policies

1. Design of Hillside Roads and Driveways

a. Hillside roadways and driveways shall be designed and located so as to:

(1) Require a minimum amount of earth movement

(4) Allow for special designs where natural features such as rocks, slopes and trees require special treatment.

#### ▪ **4. Tree Removal**

##### 4.4 Implementation

4.0 The cutting of live trees should be limited in order to preserve the scenic beauty, prevent erosion of top soil.

### **General Plan**

#### ▪ **2.0 Land Use**

2.3 The Conservation Element goals address protecting and enhancing the natural environment. Programs that retain natural features such as tree preservation, limited grading and water conservation maintain the natural character of Los Gatos

1. Development should avoid areas subject to severe fire danger. In order to achieve this, development should:
  - d. Not be located within densely wooded areas.

It is obvious that the points made through out the various documents are significantly concerned with the protection of elements within our environment. The Least Restrictive Development Area (LDRA) selected within the subdivision, takes all of these factors into consideration. The following is a listing of the key concerns and how they are being addressed.

### **Trees**

The best building site with in the LRDA has one 24" mature Oak in healthy condition. It is our intention that a home be designed around the existing tree if at all possible. If not, it would be the only tree that can not be transplanted to a new location.

### **Grading**

It is our intention to design a home that utilizes the least amount of grading possible. The home will step down the hillside so it will blend better with the natural environment.

### **Land Use**

As specified in the General Plan, the land should be limited to agriculture and single-family detached homes. This subdivision would be using the land as specified for a single-family residence. It will in fact exceed the Land Use Designation requirements of 0-1 dwellings per net acre. The proposed parcel will be over 1 acre.

### **Facilities and Services**

This subdivision will meet all the requirements for road access as clearly defined in the submitted title documents. San Jose Water Co. will provide domestic water service and sewage disposal is planned to be by sanitary sewer methods.

### **Circulation**

The building site has access off of Francis Oaks Way. The area directly adjacent the road is already almost flat and will require only a small amount of final grading to enable access to a driveway surface. In September of 2000, an Environmental Study completed for the three homes across the street, stated that the additional traffic of 20 trips per day for three new homes on the road was not significant. The Nolans purchased the center lot of the three and the lot adjacent their property at 15451 Francis Oaks Way. The architectural site application that was approved for this address was never built and the approval was allowed to lapse. They have stated that they currently intend to build a garage on the lot. An additional home would not impact the area beyond what has already been studied and approved by the Town of Los Gatos.

## **Hillside Development Standards and Guidelines January 2004**

### ▪ **Introduction**

#### E. Objectives of the Hillside Development Standards and Guidelines

4. Maintain the natural appearance of the hillsides from all vantage points including the valley floor.
5. Protect the ridgelines from development.
7. Maintain the rural, natural open space character of the hillsides

### ▪ **II. Constraints analysis and site selection**

#### C. Selecting the building site Standards:

2. Preserve views of highly visible hillsides. Views of the hillsides shall be protected from adverse visual impact by locating building on the least visible areas of the LRDA.

In a variety of locations throughout the documents, it is clear that the location of a new home should be placed in an area that already has homes and that protects the ridgelines from visible development. These themes are consistent throughout all the documents and key to overall appearance of Los Gatos.

### **Neighborhood fit**

It is our intention that the home that will be proposed will step down the hillside as specified in the Hillside Development Standards and Guidelines. The location is on the down hill side of the road and should have no effect on adjacent neighbors views of the mountains or ridgelines. It will also have no effect on neighbors views looking toward the valley floor.

### **Ridgeline development**

The Town has an opportunity to protect a prominent ridgeline. Please see the section 4.

4. Los Gatos wants to create, expand and protect scenic view sheds through the use of open space. Again the Town's documents have made it clear that the protection of scenic views is a top priority. These positions are stated clearly as follows:



## **Issue 5**

The Town should make open space preservation a priority in all development projects.

O.P.5.1 Promote private open space in all planning decisions

O.P.5.2 Encourage the use on innovative, development techniques which will provide open space within individual developments, public, or private

## **Hillside Development Standards and Guidelines January 2004**

### **■ Introduction**

#### **E. Objectives of the Hillside Development Standards and Guidelines**

4. Maintain the natural appearance of the hillsides from all vantage points including the valley floor.

5. Protect the ridgelines from development.

6. Maximize contiguous open space

7. Maintain the rural, natural open space character of the hillsides

### **■ II. Constraints analysis and site selection**

C. Selecting the building site  
Standards:

2. Preserve views of highly visible hillsides. Views of the hillsides shall be protected from adverse visual impact by locating building on the least visible areas of the LRDA.

### **■ VIII. Subdivision and Planned Development Projects**

#### **C. Least restrictive development areas (LRDA)**

1. Hillside residential development shall preserve open space and protect significant natural features in the layout and design.

The Town's clear focus on maintaining scenic view sheds, making open space preservation a priority and the prevention of development on the ridgelines is mentioned repeatedly throughout the aforementioned documents.

### **Summary**

In 2001, a home was approved to be built at 15451 Francis Oaks Way. This lot's Architectural and Site approval was allowed to lapse. It is our understanding that the Nolans currently have no intention of building a home on this lot. We believe that this subdivision request conforms to the Town's General Plan, Los Gatos Hillside Specific Plan, and the current Hillside Development Standards and Guidelines. We also believe the subdivision will provide significant community benefit by protecting the viewable hillsides of Los Gatos and providing fire protection. We respectfully request your support and approval of this subdivision request.

Sincerely,  
Mike and Ann Moffat

>>> David Weissman <gryllus1@juno.com> 11/27/2006 2:10 PM >>>

Hi, Bud,

It is good to hear that you continue to mend and are coming into the office, even if only for limited amounts of times.

I have a couple of items that I would like your input and opinion on. If you are not up to addressing them at this time, please just let me know and maybe suggest alternative avenues. Since some of them have historical significance, your iron-clad memory could be invaluable. If you don't have the stamina now, let me know if you think it would be helpful to get in touch with Lee Bowman for his perspective. Both items below relate to a proposed subdivision by Moffat of his steep 7.9 acres on Francis Oaks Way which may come before the PC on December 13th. Moffat is proposing to subdivide his lot, zoned HR 2 1/2, into 2 lots of 1.1 and 6.9 acres, and these facts relate to the issue raised in #1 below. His slope density calculations are just less than 2.0 if the paved surface area of private Francis Oaks Way is subtracted from his gross land area, and just over 2.0 if the surface area of Francis Oaks Way is not subtracted, and these facts relate to the issue raised in #2 below. While these issues relate specifically to this one project, they could clearly have wider implications for the Town on other projects.

1. Land Area vs Lot Area: Under the slope density calculations of Sec. 29.40.250 (2), for land in, say, HR-2 1/2 (as Moffat is), "the minimum **land area** for each dwelling unit shall not be less than 'a' ..... or 2.5 acres". The interpretation of "HR-2 1/2" (or HR 5 or HR 20) always seemed crystal clear to me: No house in a HR-2 1/2 hillside subdivision could be on less than 2 1/2 acres, and the lot might have to be considerably larger depending on the overall slope. Subsequently, Sec. 29.40.260 says "the minimum **lot area** in an HR zone (not to be confused with the required minimum land area for each dwelling unit) is 40,000 square feet." I have always puzzled over what the relevant application could be for the 40,000 square feet section, unless it applied to a PD application. But the possible significance of Sec 29.40.260 becomes clear when one reads, in "definitions" Sec. 29.10.020, that "**lot area** means the total horizontal area included within lot lines." Thus, a steep lot could measure, say, 100 by 440 feet (having a **surface area** of 44,000 square feet). but have a **lot area** of only 40,000 horizontal square feet. Such a situation would, obviously, only be applicable for proposed projects in areas zoned HR 1. These interpretations are also supported by the definition of **slope density formula** given on page 71 of the Hillside Development Standards and Guidelines (adopted most recently in 2004, and therefore, seemingly, the last word): "The size of lots allowed in a new subdivision based on a formula that increases the minimum **lot size** allowed as the slope of the site increases." All the above reasoning is consistent with those recollections that John Lochner has of the discussions and intent that took place when the Council passed the above codes in 1976 while Lochner was on the Council. Additionally, other people have made these same interpretations with reference to the Moffat property: the draft Initial Study of September, 2006, for the Moffat subdivision application prepared by Geier and Geier; documents submitted by Tony Jeans on July 20, 2000 (and available in the Town's file); and an analysis performed on July 11, 1991 by Nowack & Associates for a prior owner (also available in the Town's files).

Imagine my surprise when Orry offered the following interpretation of the above 2 Sections (as relayed to me on November 6, 2006, in an email from Fletcher Parsons). I quote: "Orry's interpretation is that a lot of 40 kSF or greater meets the code [regardless of the HR designation] so long as the total number of allowable lots (gross lot area less public right of way divided by the minimum 'land' area) is not exceeded." While I can understand the utility of this interpretation as it might relate to a PD application, such an interpretation makes no sense for a subdivision. Why have any HR designations at all? And I suspect this interpretation would surprise both the PC and Council. So, I would appreciate your take on this situation and what historical perspective you can bring to the table regarding past applications and interpretations of these same codes.

2. Include or exclude Private Right of Way (and thus private streets) in slope density calculations. In Sec 29.40.250 (a) (1), "A is the gross area in acres of the parcel, not including the right-of-way of existing public roads." Excluding **public** roads from the gross area makes sense since such areas are unavailable for development. Likewise, **private** roadways and their associated right-of-ways are also unavailable for development, unless specifically agreed to by those persons possessing the right-of-ways. Thus we find in Sec. 29.80.120 (6) i, relating to PD developments, what seems to be an acknowledgment that private roads should have an equal footing with public roads because the areas of both are to be excluded when calculating the net land area. We also find consistency on page 70 of the Hillside Standards for the definition of **Net lot area**: "The

Date: December 05, 2006

Town of Los Gatos  
110 East Main St.  
Los Gatos, CA 95030

Dear Sir,

I am writing to you today to voice my support for the proposed Moffat Subdivision. As you may know, Francis Oaks Way is a dead end road. My property is located at 15491 and is one of the few properties that are located further down the road passed the proposed subdivision. I believe that any impact on the neighborhood will be very minimal.

I am very pleased to see that the Moffat's are working diligently to follow the Town of Los Gatos General Plan and Hillside Standards. I am relieved to see that they are proposing a scenic easement that will protect a prominent ridgeline that is viewable from many different locations in the valley floor, but especially the front door of my property. Again, I would like to state my support for this project and believe that the town should approve the requested subdivision.

Sincerely,

John Magner

December 6, 2006

Planning Commission  
Town of Los Gatos

RE: 15500 Francis Oaks Way  
Subdivision Application M-06-4

**RECEIVED**

DEC -7 2006

TOWN OF LOS GATOS  
PLANNING DIVISION

Regarding: Subdivided lot size

In reviewing this application to subdivide an approximate 7.9 acre parcel into a 6.8 acre and a 1.1 acre parcel, one immediately questions why only a 1.1 acre parcel from nearly 8 acres – not to mention that the zoning is HR-2 ½ ?

The following is a list of possible reasons why I believe the applicant took this approach:

1. The applicant wishes to retain as much of his parcel for continued use for riding ATV's throughout the property.
2. The applicant wishes to retain at least 5 acres so as to continue to be able to discharge firearms on the property.
3. The applicant thinks that there is a (remote) possibility that sometime in the future, codes, zoning, etc. will change such that he can further split his property, irrespective of current restrictions.
4. Due to ambiguous and confusing language in the Codes, Staff provided instructions based on their interpretations of Town Codes regarding minimum lot size.

I believe that the following clearly sets the requirements for minimum lot size:

1. It has been universally assumed by most people familiar with zoning standards that all or a portion of the numeric sequence following an "alpha" designation defines the minimum lot size for that zone. In this case, HR-2 ½ would indicate Hillside Residential – 2 ½ acre minimum lot size.
2. Section 29.40.250 (a) (2) defines the minimum "land" area based on the slope density formula. For the applicant's property, this formula yields a minimum land area of approximately 3.7 acres. Confusion now arises due to 29.40.260 that refers to a minimum "lot" area of 40,000 square foot in an HR zone. Without further clarification, one could interpret this as meaning that a property to be subdivide into 2 parcels must be at least 7.4 acres in size (2 X 3.7), but that one of the resulting lots need only to be no less than 40,000 square feet.
3. However, the 2004 Hillside Development Standards and Guidelines clearly clarifies and adds to these Codes:
  - a. The Glossary (page 71) defines the "Slope density formula" Standard as "The size of lots allowed in a new subdivision based on a formula that increases the minimum lot size allowed as the slope of the site increases".

15331 Francis Oaks Way  
Los Gatos, CA 95032  
December 7, 2007

Town of Los Gatos  
110 East Main Street  
Los Gatos, CA 95030

Subject: Moffatt Subdivision

Dear Planning Commissioners:

This letter is to document my support for the proposed subdivision by my neighbors Ann and Mike Moffatt, since I am unable to attend your meeting where this proposal will be discussed.

I reviewed the plans at a meeting called some time ago by Ann and Mike, and I found nothing objectionable. Indeed, I think the addition of a quality home on the proposed site will be a nice addition and upgrade to the neighborhood.

As you know, Francis Oaks Way is a narrow road in rather poor condition. If the potential issue of additional traffic / traffic mitigation on Francis Oaks Way comes up, please consider the following with respect to potential development of three parcels across the street from the proposed subdivision:

1. Approximately four years ago (my laptop P.C. with the spreadsheets was stolen), John Magner, then owner of 15451, 15471, and 15491 Francis Oaks Way offered to pay about seventy per cent of the cost to widen (wherever practical) and resurface Francis Oaks Way provided that the rest of the Francis Oaks Way residents would cease objecting to his projects and pay the remaining thirty per cent of the cost. Some neighbors were unwilling to meet these conditions, and the offer was never put to a vote.
2. More than two years ago, the Town of Los Gatos required John Magner, in order to receive approval to develop 15451 and 15491 Francis Oaks Way, to hold three meetings of neighborhood residents to consider widening Francis Oaks Way and / or other traffic mitigation steps. At the first of these meetings, the residents voted to focus on bringing about a formal Road Association to maintain Francis Oaks Way and chose not to seriously consider widening the road. Subsequently, the Town required Mr. Magner to install two turnouts on Francis Oaks Way to mitigate any future traffic from development of 15451 and 15491 Francis Oaks Way. At this point, no dwelling has been constructed at 15451 Francis Oaks Way, and I am aware of no plans to build on that site.
3. When the first "Magner meeting" turned its attention to formalizing a Road Association, I volunteered to act as "secretary" to comprise and edit required documents. Working with three other neighbors as a volunteer committee, after

Appeal for 15500 Francis Oaks Way

**ATTACHMENT 8**  
Conceptual house plans

AND

**ATTACHMENT 9**  
Subdivision plans

**COPIES AVAILABLE FOR REVIEW  
IN THE CLERK DEPARTMENT**